NARUC's comments in the underlying proceeding referenced in the NPRM detailed its concern for regulation to be technology neutral. We respectfully request those comments be incorporated by reference in this proceeding. However, to the extent the FCC determines that § 332(c) still applies to the provision of CMRS service, NARUC respectfully suggests that State authority over CMRS interconnection/unbundling is controlled by § 332(c) "other terms and conditions." Specifically, prior to the '96 Act, § 332(c) assured that the States, not the FCC, retained the jurisdiction to require CMRS carriers to unbundle intrastate services and/or functions and provide such services at wholesale rates.

Later, in ¶ 195, the FCC seeks comment on whether and to what extent CMRS providers should be classified as LECs and the criteria that should be used to make this determination for the purposes of section 251(b). If the FCC determines that CMRS providers are allowed to provide fixed wireless local services they wish to know how this determination will affect whether or not these providers are included in the definition of LEC.

Again, as NARUC suggested in a related proceeding, if a CMRS provider provides fixed local services, they should be treated as a LEC. The type of service being provided should be the determinant for regulation and classification not the technology employed.

b. Detailed prescriptive Federal rules are not appropriate from a policy perspective.

(1) The limited time for FCC action strongly favors broad and flexible approach.

The number of potential issues raised by the FCC is enormous. The NPRM asks over 100 questions and makes several dozen tentative conclusions. Undoubtedly, comments filed in this proceeding will multiply the potential issues for FCC resolution. The topics covered vary dramatically in terms of complexity and available experience base for resolution. Once the reply comments are filed, the FCC will have just about two months to formulate final rules. That is barely time to summarize the comments.

As suggested, supra, writing detailed "standards" under such an extreme time constraint runs the obvious risk of imposing nationwide standards that are, at best, suboptimal. This is particularly true in areas where there is no experience base of sufficient depth to allow a rational policy choice to be made.

(2) A broad approach allows State experiments with different pro-competitive regimes to continue to address the evidentiary vacuum surrounding many issues.

As discussed, infra, NARUC does not believe Congress intended the FCC to address pricing issues in this proceeding. However, jurisdictional issues aside, the suggestion to apply even a generic flexible pricing standard could potentially wreak havoc on the very pro-competitive State initiatives Congress intended to flourish.

Moreover, without even addressing the complex technical issues involved, it is doubtful that such a generic pricing standard could even be effective given the substantial specific variations which exist among the States.[20] There simply not a sufficient body of evidence available for the FCC to specify one method of proceeding over another.

An example is in the area of compensation mechanisms for traffic termination. Within the last three years, a number of States, including Oregon, California, Iowa, and Washington required companies to use "bill and keep" until a cost-based mechanism can be developed. Colorado adopted a rule that requires elements to be cost-based. Illinois, Massachusetts, Maryland, and Michigan established actual rates for reciprocal compensation. These State experiments seeking optimum solutions could be thwarted if the FCC's rules are unduly prescriptive.

In such circumstances, the NPRM ¶ 33 suggestion to allow State variability and experimentation is appropriate.

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[20] Paragraph 33 of the NPRM suggests that the case for permitting material variability among the states is strengthened if there are substantial state-specific, technological, geographic, or demographic variables in local markets. The wide range of costs for links, ports, switching and transport in rural states like Maine may be one such case. While the use of average TSLRIC pricing for these network components may be appropriate in an urban state or market area with somewhat homogenous cost characteristics, an average prescriptive policy could have devastating "cream skimming" implications in states like Maine where the monthly cost of loop may vary from under $5 to over $200 a month and where the switching and transport costs can vary between areas by a factor as great as 10 to 1.

Throughout the NPRM, e.g., ¶ 29, the FCC also proposes restricting State experimentation by establishing one State's approach as a model for all to follow. Rules to manage the development of competitive markets are still in very early stages of deployment.[21] Currently, it is not possible to know which state rules work the best. All of existing approaches will likely require some adjustment as states learn more about how the markets are working and as conditions change. Moreover, a solution may emerging from one State's regulatory environment that appears to effectively bridge the transition to a fully competitive market. However, that proposal may not be appropriate for application in other States that are starting from a different regulatory base and are facing markedly different market characteristics.

(3) Detailed prescriptive rules will likely impede State efforts to foster local competition and precipitate additional litigation concerning State compliance.

Many states have either already issued rules and orders related to interconnection and unbundling or will before the FCC issues its rule in August.

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[21] For example, in ¶ 96 of the NPRM, mimeo at 33, the FCC acknowledges that New York, one of the state commissions that has made the most progress in the country toward developing competitive markets, is still struggling with implementation issues. This is a further indication that prescriptive rules should NOT be set. States need to experiment with answers before the range of "correct" answers to implementation is known. States will learn from New York's experience. The FCC does not have to impose the New York approach as the minimum guideline. Fewer and broader national requirements are better able to accommodate new technologies, services, or market conditions without modification.

Unlike any generic Federal approach, each of these proposals either was developed, or is being developed, with the existing State regulatory framework and local market conditions as a backdrop. Most, if not all, of these proposals, can claim consistency with the broad terms of the '96 Act. Competition is already moving forward without any FCC rules in states that have attractive markets. Specific rules to guide these states are unnecessary. Other States are advancing rapidly to assure they can meet the duties imposed under § 252 of the Act.

To avoid blocking the progress these States have made, and to assure they are allowed to advance, the FCC's rules should be very general. It is unlikely that Congress meant to (1) halt or retard pro-competitive State initiatives when it passed the 1996 Act or (2) encourage additional litigation, at taxpayer expense, over State compliance issues. Indeed, as discussed infra, we do not believe the Act gives the FCC authority to preempt such initiatives.

(4) The spectrum of State progress in advancing pro-competitive policy also weighs in favor of a generic nonprescriptive approach.

In ¶ 28, note 43, mimeo at 11-2, and elsewhere in the NPRM,[22] the FCC tries to support the need for specific rules by claiming that many states have not yet adopted rules related to local competition. These NPRM efforts to bolster the case for detailed national standards by citing to States with few local competition initiatives are disingenuous.

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[22] Cf. NPRM, ¶ 5, mimeo at 4.

First, detailed guidelines will not change or reinforce the State's § 252 duties or the FCC's express authority to step in if the State fails to act. Indeed, the more detail that is provided, the more likely that ongoing State efforts to transition from their existing regulatory paradigms will be frustrated.

Second, the cited range in progress highlights States' widely ranging demographic and market conditions - conditions which buttress a broad brush approach to national standards. It does not support an inference that any States will not continue efforts to implement the Act or that a detailed approach is required.

For example, in 1987, the South Dakota State Legislature added § 49-31-21 to the South Dakota Revised Statutes. That section allows the South Dakota commission to permit, "with or without a hearing, the construction of a telecommunications facility...which will provide competition in the delivery or use of...services." During the nine years following passage, no company ever applied for access to US West service territory. As no one ever asked to compete, the S.D. Commission, until the '96 Act, never needed to promulgate interconnection rules.

Similarly, over ten years ago, in 1985, the Montana Telecommunications Act provided the Montana commission with the regulatory framework to allow the transition to a fully competitive local communications market. Only a few years ago, Montana was one of twelve states with no barriers to entry.

However, due to low population density,[23] a dearth of major customers, and the high cost of providing local service, there still is no effective local competition. Over the past few years, several competitive access providers, including MFS, were asked if they intended to begin operations in Montana. They said no. In spite of these problems, the Montana commission has aggressively pursued competition in every situation where it might benefit Montana customers, inter alia, opening an inquiry into Open Network Architecture, reducing regulation of intrastate toll, granting LECs pricing flexibility, ordering substantial access charge reductions, etc. The Montana Commission is currently moving aggressively to implement the '96 Act. Within the first month after its passage, Montana opened a docket to develop a strategy to carry out its duties as prescribed in the Act. Within a few weeks of the Act's passage, Montana assembled about one hundred current and potential local phone service providers, consumers', advocates and legislators for a full-day seminar and roundtable discussion on the new Act and its impacts on Montana. Subsequently, the Commission issued a notice outlining possible actions and requesting comments on a series of issues. Based on those comments, the Commission is developing appropriate Montana policies in all areas.

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[23] "Montana is one of the largest States, but with one of the smallest populations. There are enormous geographic, demographic and economic differences among the various counties. There is "lots of dirt between phones." Much of that dirt is the Rocky Mountains. To meet these conditions, the Montana commission must work intensively with local communities and providers to improve both basic and advanced services." See, "*Competition in Montana Regulation*," Commissioner Bob Rowe (May 1996).

Finally, over a year ago, the Maine commission also issued a pro-competitive proposal to provide for an "access charge structure" to allow competitive local exchange carriers to interconnect with the incumbents. The preliminary proposal contains a "geographic averaging element" which permits, inter alia, the competitive LECs to receive subsidy payments for providing rural area service. Potential local exchange competitors evinced very little interest in the paper. Prior to passage the 96 Act, no entity expressed an interest in providing competitive local service in Maine in the near term. It is not surprising that Maine has not chosen to open a rulemaking on the local exchange competition issues.

That decision, however, does not translate into a Maine State policy to retard competition or delay in addressing implementation of the '96 Act. Indeed, shortly after passage, AT&T sent a form request for authority to provide local service out to all fifty states. Maine granted the request in less than six weeks.[24]

These examples do not support the imposition of detailed standards. They merely affirm that market conditions, demographics, the number of potential entrants, and the timing of competitive entry are going vary significantly from State to State. Such variation strongly supports very broad FCC rules.

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[24] See, Order, "AT&T Communications of New England, Inc. Request for Authority to Expand Certificate, to Permit, to Provide all forms of Local Exchange Service" Docket No. 96-105, (April 23, 1996).

In any case, well over sixty percent of U.S. citizens live in States with current State statutes and/or agency rules that already allow competition in the local exchange market. Competitive initiatives will proceed in these jurisdictions even if the FCC never issues any rules and Congress repeals the 1996 Act. That percentage is increasing every day. Smaller states with no competition immediately on the horizon have been soliciting data related to competition from their more experienced brethren. They realize it is in the consumers best interests to immediately proceed to comply with the terms of the Act.

B. APPROPRIATELY FASHIONED NATIONAL MINIMUM STANDARDS IN THE LIMITED SUBPARTS § 251 THAT CONTEMPLATE FCC RULES COULD FACILITATE COMPETITION.

The 1996 Act already provides a national framework for the development of competitive markets. Additional rules to implement subsections of § 251 where the FCC has been given authority, could, if appropriately structured, facilitate competition. The FCC's authority to address numbering portability issues is an example.

1. Number Portability - *Issues* concerning cost recovery of the associated costs need further examination by both Federal and State interests.

The discussion of a national standard for numbering portability provides a good starting point. In ¶ 198 and 199, the FCC discusses § 252(b)(2) requirements for number portability. To adopt number portability as quickly as possible, the FCC will address issues raised in the Act in their ongoing proceeding.

Among other things, that proceeding will address LEC deployment schedules for providing number portability, how number portability will be provided and cost recovery for this service.

While a national standard for how numbering portability may well be in the public interest, NARUC's respectfully suggests that issues concerning cost recovery of the associated costs need further examination by both Federal and State interests. At a minimum it appears that States should only be responsible for the number portability costs that can allocated to the intrastate jurisdiction through the existing separations process.

2. State role in numbering administration - The suggested State delegations are appropriate.

The FCC's authority with respect to numbering issues is clear. The Notice seeks comment on whether the FCC should delegate matters involving the implementation of new area codes, such as the determination of area code boundaries, to the state commissions so long as they act consistently with the FCC s numbering administration guidelines. NARUC concurs with the FCC s tentative conclusion that such matters should be delegated to the state commissions.

The Notice also seeks comment regarding the Ameritech Order, which sought to clarify the scope of authority of the FCC and the States with respect to numbering administration, and which set forth some broad guidelines for evaluating area code relief plans. NARUC appreciates the FCC s efforts to delineate areas of responsibility and to guide the states in the implementation of new area codes.

However, the FCC may wish to revisit the Ameritech Order so as to allow States to implement additional and innovative means of area code relief.

Finally, the Notice seeks comment on whether the FCC should delegate to Bellcore, the LECs, and the states the authority to continue performing their functions related to the administration of numbers, as those functions existed prior to enactment of the 1996 Act, until such functions are transferred to the new NANP administrator. NARUC concurs with the FCC s tentative conclusion that such delegation should continue. The way the request for comment was phrased, however, suggests that all the functions performed by the LECs and the states will also be handed over to the new NANP administrator when it becomes operational. NARUC agrees that the NANP administrator should assume the functions performed by the LECs; however, NARUC suggests that the FCC clarify that the states will continue in their number administration roles, as indicated by FCC statements in the Ameritech Order and elsewhere concerning the appropriate balance of FCC and State responsibilities.

3. Unbundling - The FCC should choose a minimum number of elements, and allow states to require additional unbundling.

The FCC tentatively concludes that § 251(c)(3) obligates the Commission to identify network elements that incumbent LEC s should unbundle and make available to requesting carriers and that it should identify a minimum set of network elements that must be available. The FCC also tentatively concludes that states may require additional unbundling of LEC networks.

Selecting network elements to be unbundled is one area in which the FCC has limited authority.

However, there are many variations between companies, both from a standpoint of technology and financial resources. Given the variations in terrain, population density and even customer demand, the rapid changes now occurring in technology cannot be deployed throughout the country at the same rate. The States must therefore have the flexibility to require unbundling that best reflects the situation each state faces and rather than be bound by a one-size-fits-all approach.

NARUC believes the FCC should choose a minimum number of elements, and allow states to require additional unbundling if needed. Moreover, we agree with the FCC's interpretation that states can use their authority under state law to require additional unbundling.

C. SEPARATIONS ISSUES

Certain issues either are already the subject of related proceedings before an existing Joint Board, or should be referred to one as soon as possible.

In note 7, mimeo at 2, the FCC suggests that separations changes may be needed as a result of this and related proceedings. Suggestions in other paragraphs, e.g., ¶ 120, would, if upheld on appeal, of necessity require major changes to separations. Accordingly, NARUC respectfully requests that the FCC make a general referral of such matters as soon as practicable.

Moreover, in ¶ 3 of the NPRM, the FCC acknowledges the interrelationship connecting this § 254 proceeding, the issues

raised in that docket, and the "upcoming proceeding to reform...Part 69 access charge rules." This acknowledgement raises an important issue: any potential near-term SLC changes must be addressed by the existing § 254 Joint Board. Indeed, the FCC has already expressly referred SLC issues to that Joint Board. Accordingly, NARUC submits that any action taken in the proposed Part 69 proceeding that addresses the SLC must, at a minimum, be explicitly based on a recommendation from this Board.

III. CONCLUSION

NARUC looks forward to continuing to work with the FCC to develop a national framework that genuinely opens the local market to competition.

However, any final interconnection rules must provide sufficient flexibility to enable States to ensure a smooth transition to local competition and to protect against customer disruption and local rate increases.

For the foregoing reasons, NARUC respectfully requests that the FCC incorporate the positions outlined, supra, in the final rule issued in this proceeding.

Respectfully submitted,

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